

AMENDED IN SENATE AUGUST 9, 2016

Senate Joint Resolution

No. 26

**Introduced by Senator De León
(Coauthor: Senator Leno)**

*(Coauthors: Assembly Members Bloom, Eduardo Garcia, Low, and
Mayes)*

August 3, 2016

Senate Joint Resolution No. 26—Relative to blood donations.

LEGISLATIVE COUNSEL'S DIGEST

SJR 26, as amended, De León. Blood donations.

This measure would call upon the President of the United States to encourage the Secretary of the United States Department of Health and Human Services to adopt policies to repeal the current discriminatory donor suitability policies of the United States Food and Drug Administration (FDA) regarding blood donations by men who have had sex with another man and, instead, direct the FDA to develop science-based policies such as criteria based on risky behavior in lieu of sexual orientation.

Fiscal committee: no.

- 1 WHEREAS, Since 1983, the United States Food and Drug
- 2 Administration (FDA), an agency under the United States
- 3 Department of Health and Human Services (HHS), had prohibited
- 4 the donation of blood by any man who has had sex with another
- 5 man (MSM) at any time since 1977; and
- 6 WHEREAS, In December 2015, based on recommendations
- 7 from the HHS Advisory Committee on Blood and Tissue Safety
- 8 and Availability, the FDA promulgated revised regulations to allow

1 an MSM to donate blood only if he has not been sexually active
2 for the past 12 months. Despite these recent steps toward a policy
3 change, a double standard would still exist under the policy as it
4 is proposed to be revised because it would still treat gay and
5 bisexual men differently from heterosexual men; and

6 WHEREAS, California law prohibits discrimination against
7 individuals on the basis of actual or perceived sex, sexual
8 orientation, gender identity, and gender-related appearance and
9 behavior; and

10 WHEREAS, Argentina, Italy, Mexico, Poland, Portugal, Russia,
11 South Africa, South Korea, and Spain have adopted blood donor
12 policies that measure risk against a set of behaviors, sexual and
13 otherwise, rather than the sex of a person's sexual partner or
14 partners; and

15 WHEREAS, The FDA *currently* does not allow gay and bisexual
16 men in committed relationships to donate blood because, while
17 one partner may be monogamous, that individual cannot guarantee
18 that the other partner is monogamous. The FDA does not apply
19 this same logic to heterosexual relationships, which in effect
20 discriminates against gay and bisexual men; and

21 WHEREAS, *The FDA is in the process of again reevaluating*
22 *and considering updating its blood donor deferral policies as new*
23 *scientific information becomes available, including the feasibility*
24 *of moving from the existing time-based deferrals related to risk*
25 *behaviors to alternate deferral options, such as the use of*
26 *individual risk assessments; and*

27 WHEREAS, A 12-month deferral policy for gay and bisexual
28 men to donate blood is overly stringent given the scientific
29 evidence, advanced testing methods, and the safety and quality
30 control measures in place within the different FDA-qualified blood
31 donating centers; and

32 WHEREAS, The American Public Health Association has stated
33 that no specific scientific rationale is provided to justify the
34 12-month deferral policy. The technology can identify within 7 to
35 10 days with 99.9 percent accuracy whether or not a blood sample
36 is HIV-positive, and the chance of the blood test being inaccurate
37 within the 10-day window is about 1 in 2,000,000; and

38 WHEREAS, The General Social Survey conducted by NORC
39 at the University of Chicago estimates that 8.5 percent of men in
40 the United States have had at least one male sex partner since 18

1 years of age, 4.1 percent of men report at least one male sex partner
2 in the last 5 years, and 3.8 percent report a male sex partner in the
3 last 12 months; and

4 WHEREAS, An estimated 45.4 percent of men (54 million) in
5 the United States are eligible to donate blood, but only 8.7 percent
6 of eligible men actually do. There are 15.7 million donations of
7 blood per year made by 9.2 million donors, yielding approximately
8 1.7 donations per donor; and

9 WHEREAS, The Williams Institute of the University of
10 California at Los Angeles School of Law estimates that, based on
11 the population of eligible and likely donors among the MSM
12 community, lifting the federal lifetime deferral policy on blood
13 donation by an MSM would result in 4.2 million newly eligible
14 male donors, of which 360,600 would likely donate, generating
15 615,300 additional pints of blood. Applying national estimates to
16 the California population, the Institute further estimates that lifting
17 the ban on MSM blood donations would add an additional 510,000
18 eligible men to the current blood donor pool, of which 43,917
19 would likely donate, resulting in an additional 74,945 donated
20 pints in California; and

21 WHEREAS, One hundred fifteen members of the Congress of
22 the United States sent a letter to the FDA Commissioner, Dr.
23 Robert M. Califf, MD, urging him to finally put an end to this
24 outdated blood donation policy and update it to reflect science,
25 not fear; now, therefore, be it

26 *Resolved by the Senate and the Assembly of the State of*
27 *California, jointly*, That the California State Legislature calls upon
28 the President of the United States to encourage the Secretary of
29 the United States Department of Health and Human Services to
30 adopt policies to repeal the current discriminatory donor suitability
31 policies of the United States Food and Drug Administration (FDA)
32 regarding blood donations by men who have had sex with another
33 man and, instead, direct the FDA to develop science-based policies
34 such as criteria based on risky behavior in lieu of sexual
35 orientation; and be it further

36 *Resolved*, That the Secretary of the Senate transmit copies of
37 this resolution to the President and Vice President of the United
38 States, to the Secretary of the United States Department of Health
39 and Human Services, to the Speaker of the House of
40 Representatives, to the Majority Leader of the Senate, and to each

- 1 Senator and Representative from California in the Congress of the
- 2 United States.

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